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24 *Attorneys for Plaintiffs*

25 **UNITED STATES DISTRICT COURT**
26 **FOR THE DISTRICT OF NEVADA**

27 MARIA TSATAS, an individual; LEONIDAS
28 VALKANAS, as trustee of the KEET TRUST
dated August 1, 2015; RAYMOND BARAZ,
an individual; PASCAL ABDALLAH, an
individual; JIMMY TSOUTSOURAS, an
individual; FOTINI VENETIS, an individual;
NICHOLAS TSOUTSOURAS, an individual;
CONNIE TSOUTSOURAS, an individual;
RAYMONDE KANHA, an individual;
ALFRED BEKHIT, an individual; JACQUEZ
ELBAZ, an individual; MARTINE
BENEZRA, an individual; JAMES P.
CARROLL, an individual; DAVID CHIN, an
individual; JENNIFER MILLS, an individual;
PAUL SUBLETT, an individual; ANDREW
SUBLETT, an individual; MANOLIS
KOSTAKIS, an individual; ESTHER
GEORGAKOPOULOS, an individual;
EVAGELIA KOSTAKIS, an individual;
DENIS PARSONS, an individual; SOFIA
KARDARAS, an individual; JIMMY
ASMAKLIS, an individual; CORRADINO
GALUPPO, an individual; DENIS KOPITAS,
an individual; TERRY TSATAS, an

29 CASE NO.: 2:20-cv-2045-RFB-BNW

30 **PLAINTIFFS' MOTION TO MODIFY THE**
31 **SCHEUDLING ORDER AND DISCOVERY**
32 **PLAN TO CONTINUE ALL DATES BY 180**
33 **DAYS**

34 **(Second Request)**

35 **[Declaration of Andrew B. Goodman and**
36 **Proposed Order filed concurrently]**

37 **PLAINTIFFS' MOTION TO MODIFY THE SCHEUDLING ORDER AND DISCOVERY PLAN TO CONTINUE**
38 **ALL DATES BY 180 DAYS**

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1 individual; GEORGE TSATAS, an individual;
2 PANAGIOTA TSATAS, an individual;
3 OURANIA TSATAS, an individual;
4 KIRIAKOS PRIMBAS, an individual;
5 EVANTHIA PRIMBAS, an individual;
6 PATRICK AYOUB, an individual; MICHAEL
7 BESCEC, an individual; ERNEST LEBOEUF,
8 an individual; PHILIPPE LEGAULT, an
individual; EFTIHIOS LITSAKIS, an
individual; GIOVANNI MONCADA, an
individual; MARC RIEL, an individual;
JARADEH SALIM, an individual; HANI
HAMAM, an individual; CONSTANTIN
ZISSIS, an individual; BESSIE PEPPAS, an
individual; NIKI PALIOVRAKAS, an
individual,

9 Plaintiffs,

10 v.

11 AIRBORNE WIRELESS NETWORK, INC., a
12 Nevada Corporation; MICHAEL J. WARREN,
13 an individual; J. EDWARD DANIELS, an
individual; MARIUS DE MOS, an individual;
14 JASON DE MOS, an individual; ROBERT
BRUCE HARRIS, an individual; KELLY
KABILAFKAS, an individual; and
APCENTIVE, INC., a Nevada Corporation,

15 Defendants.

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1 Plaintiffs hereby submit their Motion to Modify the Scheduling Order and Discovery
2 Plan to Continue All Dates by 180 Days. As required under Federal Rule of Civil Procedure
3 16(b)(4) (“Rule 16(b)(4)”), good cause exists for this Motion because: (i) Plaintiffs have been
4 diligent in striving to meet the current Scheduling Order deadlines; (ii) Plaintiffs require
5 additional time to evaluate whether to add parties and/or amend the pleadings; and (iii)
6 Defendants will suffer no prejudice as a result of any granted modification of the Scheduling
7 Order.

8 This Motion is brought pursuant to FRCP 16, LR IA 6-1, and LR 26-3, and is supported
9 by the following Memorandum of Points and Authorities, the attached declaration of Andrew B.
10 Goodman, the papers and pleadings on file with the Court, and any oral argument presented
11 before the Court.

13 | DATED: November 18, 2021

Respectfully submitted,

By: /s/ Andrew B. Goodman
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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Plaintiffs bring this Motion to Modify the Discovery Plan and Scheduling Order to Continue All Dates by 180 Days for the following reasons demonstrating good cause:

Plaintiffs will be unable to meaningfully decide whether to amend the pleadings or add parties by the upcoming deadline of November 19, 2021. Although the Court has denied Defendants' Motion to Dismiss (ECF No. 76), Plaintiffs have not received meaningful discovery responses from Defendants, which has prevented them from making an educated decision on whether to amend the pleadings or add parties. As the SEC's Complaint indicates, the alleged fraudulent scheme has more layers to it than Plaintiffs realized when they filed the Complaint on November 5, 2020. Plaintiffs should not be foreclosed from amending the pleadings or adding parties because Defendants have not cooperated in the discovery process.

Defendants will suffer no prejudice as a result of any extension granted as to the Scheduling Order. Indeed, Defendants have yet to conduct several additional items of discovery, and may not even oppose this Motion. Therefore, the Motion should be granted and the scheduling order extended by 180 days.

II. STATEMENT OF FACTS

The Court has granted one previous stipulation to continue deadlines in this case. ECF No. 62. On July 20, 2021, the Parties stipulated that there was good cause for a 120-day extension of the discovery deadlines in this case so that (i) the Court may rule on Defendants' Motion to Dismiss (ECF No. 39), Motion for Sanctions (ECF No. 50), and Motion to Stay Entire Case (ECF No. 53), (ii) Plaintiffs can seek the information they need to meaningfully decide whether to amend the pleadings or add parties, (iii) the Parties may attempt to resolve their discovery disputes related to Plaintiffs' First Set of Discovery Requests short of judicial intervention, and (iv) the Parties can have more time to complete the necessary discovery. ECF No. 61 at p. 4:7-13.

The Court granted the Parties' stipulation on July 22, 2021 and, for good cause, continued the deadlines in this case as follows (ECF No. 62 at p. 5:7-11):

Discovery Cut-Off – February 21, 2022

Amending the Pleadings and Adding Parties – November 19, 2021

Expert Disclosures – December 21, 2021

Rebuttal Expert Disclosures – January 20, 2022

Dispositive Motions – March 22, 2022

Since then, the Court, on September 3, 2021, has denied Defendants' Motion to Dismiss (ECF No. 39), Motion for Sanctions (ECF No. 50), and Motion to Stay Entire Case (ECF No. 53). ECF No. 76 (denying all three motions).

On March 2, 2021, after Plaintiffs' Complaint (ECF. No. 1) was already on file for nearly four months, the SEC filed a complaint against several of the same defendants in the present action (Airborne, Kabilafkas, and Daniels) and made allegations suggesting a more wide-ranging fraudulent scheme. *See generally* ECF No. 46-2. Plaintiffs have attempted to seek the information they need to meaningfully decide whether to amend the pleadings or add parties through written discovery requests served on May 7, 2021. Declaration of Andrew B. Goodman filed concurrently herewith ("Goodman Decl.") ¶ 6. These written discovery requests addressed a number of select allegations in the SEC's Complaint. *Id.* Defendants were largely uncooperative. *Id.* Accordingly, on August 27, 2021, Plaintiffs filed motions to compel. *Id.*; *see also* ECF Nos. 66-73. These motions remain under submission as of October 28, 2021. ECF No. 100.

Thus far, Plaintiffs have sent a first set of requests for admission, interrogatories, and requests for production to all Defendants on May 7, 2021. Goodman Decl., ¶ 7. The sufficiency of Defendants' objections and October 8, 2021 supplemental responses are subject to Plaintiffs' motions to compel, for which a ruling is pending. ECF No. 100. On September 24, 2021, Defendants sent Plaintiffs their first set of requests for admission, interrogatories, and requests for production. Goodman Decl., ¶ 7. Plaintiffs are in the process of preparing responses, currently due on the extended deadline of December 3, 2021. *Id.*

Significant discovery remains to be completed, including, but not limited to: third-party subpoenas; depositions of all Defendants; depositions of Plaintiffs; written discovery to Plaintiffs; further written discovery to Defendants, depending on any further responses to Plaintiffs' First Set of Written Discovery that may be compelled by Court order. Goodman Decl., ¶ 8.

1 Plaintiffs will be unable to meaningfully decide whether to amend the pleadings or add
 2 parties by November 19, 2021. Goodman Decl., ¶ 9. Although the Court has denied Defendants'
 3 Motion to Dismiss (ECF No. 76), Plaintiffs have not received meaningful discovery responses
 4 from Defendants, which has prevented them from making an educated decision on whether to
 5 amend the pleadings or add parties. *Id.* As the SEC's Complaint indicates, the alleged fraudulent
 6 scheme has more layers to it than Plaintiffs realized when they filed the Complaint on November
 7 5, 2020. *Id.* Plaintiffs should not be foreclosed from amending the pleadings or adding parties
 8 because Defendants have not cooperated in the discovery process. *Id.*

9 Plaintiffs have made diligent efforts to pursue the discovery they need to meaningfully
 10 evaluate whether to amend the pleadings or add parties as a result of the SEC's allegations of more
 11 wide-ranging fraud. Goodman Decl., ¶ 10. However, because Plaintiffs were forced to file motions
 12 to compel, and a ruling is pending, they will need more time to meaningfully evaluate whether or
 13 not to amend the pleadings or add parties and complete discovery. *Id.* Given that the alleged
 14 fraudulent scheme is so wide-ranging that the SEC alleged it could involve approximately \$45
 15 million (see ECF No. 46-2 at ¶ 1), and Defendants have vehemently opposed all Plaintiffs'
 16 discovery efforts, there is good cause for an extension of 180 days to the dates in the scheduling
 17 order. Goodman Decl., ¶ 10. Accordingly, Plaintiffs propose the following schedule:

18 Discovery Cut-Off – August 22, 2022

19 Amending the Pleadings and Adding Parties – May 19, 2022

20 Expert Disclosures – June 21, 2022

21 Rebuttal Expert Disclosures – July 20, 2022

22 Dispositive Motions – September 22, 2022

23 *Id.*

24 Between November 11, 2021 and November 17, 2021, Plaintiffs' counsel met and
 25 conferred with defense counsel in an attempt to reach a stipulation in lieu of filing a motion.
 26 Goodman Decl., ¶ 11, Ex. A thereto. It is possible Defendants might not oppose Plaintiffs' request
 27 to continue dates by 180 days. *Id.* But, due to the press of other matters, defense were unable to
 28 confirm one way or another before the present Motion was filed. *Id.*

1 **III. LEGAL STANDARD**

2 Under Federal Rule of Civil Procedure 16(b)(4), a scheduling order may be modified for
 3 good cause and with the Judge's consent. FED. R. CIV. P. 16(b)(4); *see also* Adv. Comm. Notes to
 4 1983 Amendment to FED. R. CIV. P. 16(b). To establish "good cause" under Rule 16(b)(4), a party
 5 seeking modification of a scheduling order must generally show that it cannot meet the deadlines
 6 in the order despite exercising due diligence. *Johnson v. Mammoth Recreations, Inc.*, 975 F.2d.
 7 604, 609 (9th Cir. 1992); *Minter v. Prime Equip. Co.*, 451 F.3d 1196, 1205, fn.4 (10th Cir. 2006).
 8 Even where the grant of an extension under Rule 16(b)(4) may present prejudice to the non-moving
 9 party, the primary inquiry in determining whether a scheduling order may be modified is whether
 10 the moving party acted diligently in attempting to meet the deadlines in the scheduling order.
 11 *Johnson, supra*, 975 F.2d. at 609 (9th Cir. 1992) (citation omitted).

12 Local Rule IA 6-1 supplements Rule 16(b)(4) and requires that "[a] motion or stipulation
 13 to extend time must state the reasons for the extension requested and must inform the court of all
 14 previous extensions of the subject deadline the court granted." LR IA 6-1. Additionally, a motion
 15 to extend any date set by a scheduling order must be supported by a showing of good cause and
 16 must be received by the court by within 21 days of the subject deadline. LR 26-3. Where a party
 17 fails to request an extension before the expiration of the subject deadline, the extension will not be
 18 granted unless the movant demonstrates that the failure to act was due to excusable neglect. *Id.*
 19 Further, a motion to extend a discovery deadline must include: (i) a statement specifying the
 20 discovery completed; (ii) a specific description of the discovery that remains to be completed; (iii)
 21 the reasons why the deadline was not satisfied, or the remaining discovery was not completed
 22 within the time limits set by the discovery plan; and (iv) a proposed schedule for completing all
 23 remaining discovery. *Id.*

24 **IV. ARGUMENT**

25 **A. Plaintiffs' Motion is timely and satisfies the procedural requirements of Local
 26 Rule 26-3**

27 Pursuant to Local Rule 26-3, "[a] motion to extend any date set by a scheduling order must
 28 be received by the court by no later than 21 days before the expiration of the subject deadline.

1 Where a party brings a motion to extend dates set by a scheduling order within 21 days of the
 2 subject deadline, the party must also support its request with a showing of good cause. A party
 3 making such a request after the expiration of the subject deadline must demonstrate that its failure
 4 to act was the result of excusable neglect.” LR 26-3.

5 Plaintiffs are filing this Motion on November 18, 2021, which is before the expiration of
 6 the November 19, 2021 deadline to amend the pleadings and add parties. ECF No. 62. Therefore,
 7 the Motion is timely.

8 In satisfaction of the procedural requirements of Local Rule 26-3, Plaintiffs offer the
 9 following:

10 **Statement Specifying the Discovery Completed:** Thus far, Plaintiffs have sent a first set
 11 of requests for admission, interrogatories, and requests for production to all Defendants on May 7,
 12 2021. Goodman Decl., ¶ 7. The sufficiency of Defendants’ objections and October 8, 2021
 13 supplemental responses are subject to Plaintiffs’ motions to compel, for which a ruling is pending.
 14 ECF No. 100. On September 24, 2021, Defendants sent Plaintiffs their first set of requests for
 15 admission, interrogatories, and requests for production. Goodman Decl., ¶ 7. Plaintiffs are in the
 16 process of preparing responses, currently due on the extended deadline of December 3, 2021. *Id.*

17 **Specific Description of the Discovery That Remains to be Completed:** Significant
 18 discovery remains to be completed, including, but not limited to: third-party subpoenas;
 19 depositions of all Defendants; depositions of Plaintiffs; written discovery to Plaintiffs; further
 20 written discovery to Defendants, depending on any further responses to Plaintiffs’ First Set of
 21 Written Discovery that may be compelled by Court order. Goodman Decl., ¶ 8.

22 **Reasons Why the Deadline Was Not Satisfied or the Remaining Discovery Was Not**
 23 **Completed Within the Time Limits Set by the Discovery Plan:** Plaintiffs will be unable to

24 meaningfully decide whether to amend the pleadings or add parties by November 19, 2021.
 25 Goodman Decl., ¶ 9. Although the Court has denied Defendants’ Motion to Dismiss (ECF No. 76),
 26 Plaintiffs have not received meaningful discovery responses from Defendants, which has
 27 prevented them from making an educated decision on whether to amend the pleadings or add
 28 parties. *Id.* As the SEC’s Complaint indicates, the alleged fraudulent scheme has more layers to it

1 than Plaintiffs realized when they filed the Complaint on November 5, 2020. *Id.* Plaintiffs should
 2 not be foreclosed from amending the pleadings or adding parties because Defendants have not
 3 cooperated in the discovery process. *Id.*

4 Plaintiffs have made diligent efforts to pursue the discovery they need to meaningfully
 5 evaluate whether to amend the pleadings or add parties as a result of the SEC's allegations of more
 6 wide-ranging fraud. Goodman Decl., ¶ 10. However, because Plaintiffs were forced to file motions
 7 to compel, and a ruling is pending, they will need more time to meaningfully evaluate whether or
 8 not to amend the pleadings or add parties and complete discovery. *Id.* Given that the alleged
 9 fraudulent scheme is so wide-ranging that the SEC alleged it could involve approximately \$45
 10 million (see ECF No. 46-2 at ¶ 1), and Defendants have vehemently opposed all Plaintiffs'
 11 discovery efforts, there is good cause for an extension of 180 days to the dates in the scheduling
 12 order. Goodman Decl., ¶ 10.

13 **Proposed schedule for completing all remaining discovery:**

14 Discovery Cut-Off – August 22, 2022

15 Amending the Pleadings and Adding Parties – May 19, 2022

16 Expert Disclosures – June 21, 2022

17 Rebuttal Expert Disclosures – July 20, 2022

18 Dispositive Motions – September 22, 2022

19 Goodman Decl., ¶ 10.

20 **B. Good cause exists for the proposed 180-day extension because Plaintiffs have**
 21 **been diligent in attempting to investigate whether or not to expand the scope**
 22 **of their Complaint and meet the initial deadlines in the Scheduling Order**

23 The Court may modify a scheduling order if a party demonstrates “good cause.” FED. R.
 24 CIV. P. 16(b)(4). “Good cause” sufficient to warrant the modification of a scheduling order exists
 25 where the party seeking modification has demonstrated diligence in attempting to meet the
 26 deadlines in the scheduling order. *Johnson*, 975 F.2d. at 609. Other factors considered by the court
 27 include: (i) whether trial is imminent; (ii) prejudice to the non-moving party; (iii) the foreseeability
 28 of the need for additional discovery in light of the extended time allowed for discovery; and (iv)

1 the likelihood the discovery will lead to relevant evidence. *City of Pomona v. SQM N. Am. Corp.*,
 2 866 F.3d 1060, 1066 (9th Cir. 2017). However, even where the grant of an extension under Rule
 3 16(b)(4) presents prejudice to the non-moving party, the Court's primary inquiry in determining a
 4 motion to modify a scheduling order is whether the moving party acted diligently. *Johnson, supra*,
 5 975 F.2d. at 609.

6 There is good cause to modify the current Scheduling Order because Plaintiffs have
 7 diligently attempted to comply with the order but cannot reasonably meet the schedule. As
 8 referenced above, Plaintiffs have made diligent efforts to pursue the discovery they need to
 9 meaningfully evaluate whether to amend the pleadings or add parties as a result of the SEC's
 10 allegations of more wide-ranging fraud. Goodman Decl., ¶ 10. However, because Plaintiffs were
 11 forced to file motions to compel, and a ruling is pending, they will need more time to meaningfully
 12 evaluate whether or not to amend the pleadings or add parties and complete discovery. *Id.*

13 The remaining factors considered by courts in determining whether modification of a
 14 scheduling order is warranted also favor the grant of the requested extension. First, trial in this
 15 action is set to occur no sooner than March 2022. Accordingly, trial is not sufficiently imminent
 16 to justify an outright denial of Plaintiffs' Motion. Second, Defendants will not suffer any prejudice
 17 should the Court grant Plaintiffs the requested modification. Here, Defendants have yet to conduct
 18 several additional items of discovery, and their discovery misconduct is the primary reason why
 19 Plaintiffs have been unable to meaningfully evaluate whether or not to amend the pleadings and/or
 20 add parties. If anything, this Motion could have been avoided had Defendants provided non-
 21 evasive, substantive discovery responses and documents. Third, an extension would lead to the
 22 discovery of critical and relevant evidence, including evidence that may lead to an amendment of
 23 the pleadings to further capture the details of Defendants' alleged fraudulent scheme.

24 **V. CONCLUSION**

25 Plaintiffs have diligently attempted to comply with the Court's Scheduling Order but
 26 cannot reasonably meet certain deadlines set forth therein, namely the deadline to amend the
 27 pleadings and/or add parties. Whereas Defendants will not be prejudiced by a modification to the
 28 Scheduling Order, Plaintiffs will suffer significant prejudice if they cannot meaningfully evaluate

1 whether or not to amend the pleadings and/or add parties. Defendants could attempt to mislead the
2 Court and/or the jury about the full scope of the fraudulent scheme, which, according to the SEC,
3 may involve up to \$45 million. *See* ECF No. 46-2 at ¶ 1 Accordingly, good cause exists for the
4 Court to modify the Scheduling Order and to extend all dates in the discovery plan by 180 days.
5 Plaintiffs therefore respectfully request that the Court enter the proposed modified scheduling
6 order, filed concurrently herewith.

7

8 DATED: November 18, 2021

Respectfully submitted.

9

10 By: /s/ Andrew B. Goodman
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24 *Attorneys for Plaintiffs*

25

ORDER

26

27 Before the Court is Plaintiffs' motion to continue all dates in the Discovery Plan and
28 Scheduling Order ("DPSO") by 180 days. ECF No. 106. Defendants agree to this request,
29 except they oppose Plaintiffs' request to also extend the deadline to amend the
30 pleadings and add parties by any time period, arguing that Plaintiffs have not established
31 the requisite good cause. *See* ECF Nos. 108 and 109. Plaintiffs replied at ECF No. 110.

32

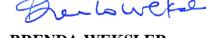
33 The Court finds that Plaintiffs have established good cause to continue all dates in the
34 DPSO, including the deadline to amend the pleadings and add parties, by 180 days.
35 Accordingly, **IT IS ORDERED** that ECF No. 106 is **GRANTED**. **IT IS FURTHER ORDERED** that
36 the hearing set for 1/6/2022 is hereby **VACATED**.

37

IT IS SO ORDERED

DATED: 3:27 pm, January 05, 2022

38


39 BRENDA WEKSLER
40 UNITED STATES MAGISTRATE JUDGE

41

CERTIFICATE OF SERVICE

I certify that all counsel of record who are deemed to have consented to electronic service are being served with a true and correct copy of the above document on November 18, 2021, via the Court's CM/ECF system. Any other parties or counsel of record will be served by regular and/or electronic mail.

/s/ Andrew B. Goodman

Andrew B. Goodman

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